

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
APPEAL FROM ORDER NO.664 OF 2007
IN
NOTICE OF MOTION NO.3149 OF 2006
IN
L.C.SUIT NO.3598 OF 2006**

V.R. Nair and Sons ..Appellants
(Orig.Defendant No.2)
Versus

1. The Municipal Corporation of
Greater Mumbai
2. M/s.Nanavati Construction Co... Respondents
(Orig.Defendant No.1
& Plaintiffs Respectively)

Mr.N.V. Walawalkar i/b. David and Assoc. for the
Appellants
Mr.Anil C.Singh i/b. Ms.Bina Rao h/f. M/s.Bina Rao and
Co., for the Respondent No.2
Ms.Nisha Dabhade for the Respondent No.1

CORAM : S.R. SATHE, J.

DATED : 25/10/2007

ORAL ORDER :-

1. Heard both the learned Advocates at length.
2. Appeal is heard finally at admission stage.
3. The Appellant-original Defendant No.2 V.R. Nair and sons have preferred this appeal against the order passed by Judge, City Civil Court Bombay in Notice of

Motion No.3149 of 2006 whereby the Plaintiff's application for temporary injunction restraining defendant No.2 from carrying out work of additions, alterations, demolitions, constructions, repairs and/or renovation in the suit shops in any manner without seeking permission from Plaintiffs and defendant No.1 was allowed. For the sake of convenience hereafter the parties shall be referred to as Plaintiffs and defendants.

4. The brief facts giving rise to this appeal are as under :-

Plaintiffs are the owners of the building in which the suit Shop Nos.1 and 2 are situated. The said shops were initially leased out to one V.R. Nair. The defendant No.2 V.R. Nair and sons are the tenants who are conducting business of medical shop in the said Shop Nos.1 and 2. The defendant No.1 is the Municipal Corporation of Greater Bombay hereinafter referred to as 'MCGB'.

5. The building is in existence for last about 70 years. The Plaintiffs after purchase of the property

carried out construction of new building in the rear portion of the said plot and the building which was on the front side in which suit shops are situated was retained. In April-2006, Mr.Rajan Nair claiming himself as one of the sons of defendant No.2 approached Plaintiffs and submitted one letter dated 15/04/2006 seeking permission for renovation of the suit shop Nos.1 and 2. In that letter, the defendant Nos.1 and 2 had assured that necessary permission from Corporation has been obtained by them for the purpose of renovation. They assured to keep the basic structure unchanged. However, thereafter, Plaintiffs started receiving complaints about the nuisance being caused due to heavy construction activities started by defendant No.2 in the suit shops. When Plaintiff deputed his person for inspecting the suit shops, the defendant No.2 did not allow him to enter the suit shop. However, it was noticed that iron girders were installed and dividing load bearing wall between Shop Nos.1 and 2 was already removed. It was also noticed that new mezzanine floor was constructed in almost 75% of the shop No.2. It was also noticed that thereafter defendant No.2 had kept the shop closed for renovation.

When Plaintiffs kept close watch, it was noticed that defendant No.2 had continued to carry on structural alteration in Shop Nos.1 and 2. Plaintiffs, therefore, asked the defendant No.2 to stop the construction work. When Plaintiffs made query with defendant No.1 it also transpired that no permission was sought from the defendant No.1 MCGB for the construction and renovation. Hence, Plaintiff filed present suit for declaration that the work of construction of mezzanine floor, removal of load bearing wall, installation of iron girders etc. was illegal and without permission of Plaintiff. Plaintiffs also prayed for mandatory direction to defendant No.1 to take appropriate action by issuing Notice under Section-342 and 347 of BMC Act and/or MRTTP Act against defendant No.2 and prayed for permanent injunction restraining defendant No.2 from carrying out any work of repairs, renovation in the suit shop without seeking permission from the Plaintiffs and defendant No.1.

6. Plaintiffs also filed Notice of Motion and prayed for temporary injunction as mentioned above.

7. The defendant No.2 contended that Shop No. 1 and Shop No.2 were amalgamated in the year 1961-62 and since that time there was no dividing wall between two shops. According to him, in April-2006 a portion of the plaster of the ceiling of the shop had fallen and as such the defendant No.2 had addressed a letter dated 15/04/2006 to Plaintiffs requesting them to give permission for the repairs and renovation. The defendant No.2 denied the allegation that any iron girders have been installed over night or that load bearing walls have been removed so as to merge Shop Nos.1 and 2. The defendant No.2 also denied the allegation about the construction of mezzanine floor. According to defendant No.2, the said mezzanine floor was in existence since long and they did not carry out any material alteration but only carried out work of extension of the cupboard for the purpose of installing fans and tube lights and for that permission of the Corporation was not necessary. The defendant No.2, therefore contended that Plaintiffs have not made out any prima facie case for granting temporary injunction and the balance of convenience is not in favour of Plaintiff.

8. After hearing arguments of both the learned Advocates and considering the documents and photographs produced by the parties, the learned Judge came to the conclusion that under the guise of repairs defendant No.2 has carried out major repairs alteration in the suit premises without seeking permission of the Plaintiff and defendant No.1. He, therefore, issued temporary injunction as prayed by the Plaintiffs.

9. It is not in dispute that Plaintiffs are owners of the suit Shop Nos.1 and 2 which are occupied by defendant No.2 as tenant. From the pleadings of the parties one thing is certain that initially, there were two separate shops i.e. Shop Nos.1 and 2 and in between the two shops there was wall. Admittedly, at present the said wall is not in existence. Plaintiffs have come out with a case that the said wall is removed overnight and iron girders have been installed. However, defendant No.2 has specifically contended that the shop No.1 and 2 were amalgamated in the year 1961-62. Plaintiffs have placed on record certain photographs to show that the wall between shop Nos.1 and 2 was removed

and even from the flooring which was below the said wall one can notice that there was wall and it has been removed. However, during the course of the arguments when query was made as to when the said photographs were taken and whether Plaintiff is ready to file affidavit of the said photographer, the Plaintiffs submitted that they have not filed any such affidavit of the photographer. One is also not in possession to note as to when the said photographs have been taken. So, under such circumstances, I am not inclined to accept the case of the Plaintiff that wall in question has been removed overnight and girders have been placed overnight. Ofcourse, there is nothing on record to show that the tenant removed the said wall with the consent or permission of the defendant No.1 MCGB.

10. It is Plaintiff's case that defendant No.2 has put the mezzanine floor without the permission of Plaintiff and defendant No.1. It is needless to say that the construction of such mezzanine floor with a platform and basin and water connection at the said place amounts to major alteration in the premises. There is absolutely nothing on record to show that the

said mezzanine floor is constructed after seeking permission from Plaintiffs and defendant No.1. However, if we see photographs of the said mezzanine floor then it appears that one lady is standing near the platform which is on the mezzanine floor and there is also water connection. This itself indicates that the work of the said mezzanine floor has been completed. However, from the photographs on the record and even from the submissions made before me, it is quite evident that some repairs are yet to be carried out in the suit premises. Considering the fact that defendant No.2 has already carried out certain renovation, major alteration and construction without prior permission of the Plaintiffs and defendant No.1 MCGB, there is justifiable apprehension in the mind of the Plaintiff that even now under the guise of carrying out repairs the defendant No.2 is likely to carry on major construction, renovation in the suit property which would not normally come under the tenantable repairs or the repairs for which permission of the landlord and the Corporation is necessary. So, considering this aspect, the order passed by the learned Trial Judge so far as material alteration, renovation and construction

is concerned the same is legal and correct. However, so far as repairs are concerned if the same are of minor nature which can be carried out with necessary permission of the landlord. There is no reason to prevent the defendant No.2 from doing so.

11. We can not ignore the fact that in the instant case, Plaintiff has suppressed the material fact that shop Nos.1 and 2 were in fact amalgamated long back. Similarly, the defendant No.2 has also carried out some major alterations and renovations without permission of Plaintiff and defendant No.1.

12. Whatever wrong has been committed by defendant No.2 by carrying out major renovation, alteration in the suit premises without prior permission of the landlord i.e. Plaintiff and defendant No.1, the Plaintiffs can take legal action about the same against the defendant No.2. But for that purpose, it would not be proper to prevent the defendant No.2 to carry out even minor repairs which would certainly not fall in the category of major alteration or renovation. Of course, for that purpose also now it is necessary to

impose certain conditions on the defendant No.2.

13. So, considering all these aspects with a view to protect the interest of both the parties till the decision of the suit. I pass the following order :-

O R D E R

1. Appeal is partly allowed.

2. The order passed by the Trial Judge in Notice of Motion is modified and defendant No.2 is restrained from carrying out any alteration, renovation and construction in suit shops till the disposal of the suit without prior permission of Plaintiff and defendant No.1

3. It is however made clear that if defendant No.2 intends to carry out any repairs in the suit shops then he may do so only after giving all details about the proposed repairs to Plaintiffs and carry out the same provided the same are permitted by Plaintiffs and Defendant No.1. If they refuse the permission, the defendant No.2 is at liberty to move the trial Court in

that behalf and trial court may pass necessary order on merits.

(S.R.SATHE, J.)